

U.S. DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DISTRICT

JAMES G. ABOUREZK, an individual, )  
JANE FONDA, an individual, and )  
ROXANNE DUNBAR-ORTIZ, an individual, )

Plaintiff, )

v. )

PROBUSH.COM, INC., a Pennsylvania corporation, )  
MICHAEL MARINO, an individual, and )  
BEN MARINO, an individual, )

Defendant. )

Civil Action No.

**FIRST AMENDED COMPLAINT,**

**NOTICE OF APPEARANCE,**

**NOTICE OF PUNITIVE**

**DAMAGES and**

**NOTICE OF JURY TRIAL**

**DEMAND**

COMES NOW the Plaintiffs, James Abourezk, Jane Fonda, and Roxanne Dunbar-Ortiz for their First Amended Complaint against Defendants Probush.com Inc., Michael Marino, and Ben Marino they state and allege:

**INTRODUCTION**

The following action against the Defendants arises from libel of the Plaintiffs. Plaintiffs discovered that they were called a traitor on Defendants website. Under South Dakota Law, such a statement is considered libel per se.

**PARTIES**

1. Plaintiff is a resident of Sioux Falls, county of Minnehaha, state of South Dakota. He is a former U.S. Senator from South Dakota.
2. Plaintiff Jane Fonda, is a resident of Atlanta, county of Fulton, state of Georgia. She is a renowned film actress and civic activist.
3. Plaintiff Roxanne Dunbar-Ortiz, is a resident of San Francisco, county of San Francisco, state of California. She is an author, historian and professor in the Department of Ethnic Studies at California State University.
4. On information and belief, Defendant, Probush.com Inc. is located at P.O. Box 16, in the city of West Point, state of Pennsylvania. The administrative contact is listed as Michael Marino. See Exhibit A, a true and correct copy of a Whois search, attached hereto and incorporated herein.

5. On information and belief, Defendant, Michael Marino is the editor and publisher of the probush.com website.
6. On information and belief, Defendant Ben Marino resides in the state of Pennsylvania. He is co-owner of Probush.com, Inc.

#### **JURISDICTION and VENUE**

7. This Court has jurisdiction over the matter and the parties under 28 USC § 1332. The Plaintiffs request damages in excess of \$75,000. Plaintiff Abourezk is a resident of the state of South Dakota, Plaintiff Fonda is a resident of Georgia, and Plaintiff Dunbar-Ortiz is a resident of California, and the Defendants are, under information and belief, residents of the state of Pennsylvania.
8. Personal jurisdiction over the Defendant's is appropriate in South Dakota under SDCL 15-7-2(1), as they are transacting business in South Dakota by the sale of merchandise from Defendant's website, probush.com, and/or SDCL 15-7-2(2), the accrual in this state of a tort against the Plaintiffs the Defendants committed, and/or SDCL 15-7-2(14), the Defendants maintenance of a website accessible by South Dakota residents.

#### **GENERAL ALLEGATIONS COMMON to all COUNTS**

9. On or about April 9, 2003, Plaintiff Abourezk discovered a website, owned and operated by the Defendants, which contained a picture of him and stated he was a traitor. See Exhibit B, a true and correct copy of partial pages from probush.com, alleged hereto and incorporated herein.
10. According to Black's Law Dictionary (6<sup>th</sup> Ed. Abridged, 1991) at 1040, a traitor is "one who is guilty of treason."
11. Treason is a felony under federal law, 18 USCA § 2381, and South Dakota law, SDCL 22-8-1.
12. The Defendant's statement about the Plaintiffs is libelous under SDCL 20-11-3.
13. Plaintiff Abourezk is an honorably discharged veteran of the United States Navy, a former United States Congressman, and a former U.S. Senator. He also is admitted to practice law before the courts of South Dakota, the District of Columbia, and the U.S. Supreme Court. He has taken oaths to uphold the Constitution of the United States in these positions.
14. Plaintiff's Fonda and Dunbar-Ortiz also knew of Defendant Probush.com, Inc.'s website, which contained pictures of them and stated that they were

traitors. See Exhibit C, a true and correct copy of the "Traitor" list, specifically pages 14 and 15, attached hereto and incorporated herein.

15. Plaintiff Fonda is a highly successful and well-respected actress. She is the daughter of actor Henry Fonda.
16. Plaintiff Dunbar-Ortiz was a founding member of the early women's movement.

**COUNT I ---DEFAMATION PER SE**

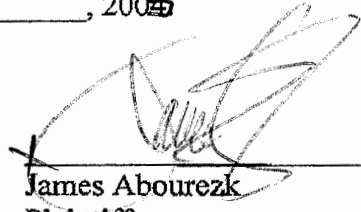
17. The Plaintiffs incorporate the above paragraphs and restates them herein.
18. Defendants have made a false statement by calling the Plaintiffs traitors.
19. Such a statement is libelous per se under South Dakota law as it accuses the Plaintiffs of a criminal act they did not commit.
20. Defendant's disclaimer on its website, probush.com, is ineffective and meaningless.
21. Defendant's libelous statement is intended to injure Plaintiff Abourezk's legal profession and standing in the community.
22. Defendants' libelous statement is intended to injure Plaintiff Fonda's acting career and standing in the community.
23. Defendants' libelous statement is intended to injure Plaintiff Dunbar-Ortiz's career as a professor and author and her standing in the community.
24. Defendants were not privileged to make such false statements about the Plaintiffs.

**PRAYER FOR RELIEF**

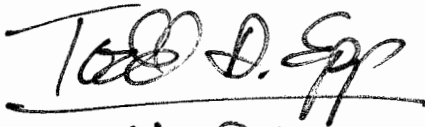
THEREFORE, each Plaintiff prays for the following relief:

- A. Actual damages in the amount of \$ 2 million.
- B. Punitive damages in the amount of \$ 3 million.
- C. The cost and attorney's fees of this action.
- D. Removal of any reference to Plaintiff on Defendant's website.
- E. Any other just and equitable relief.
- F. Public Apologies.

Dated this 29th day of April, 2005

  
James Abourezk  
Plaintiff

Dated this 29th Day of April, 2005

  
Todd P. Esp  
Attorney for Plaintiffs

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
Jane Fonda  
Plaintiff


Dated this 2 day of June, 2004.

Roxanne Dunbar Ortiz  
Roxanne Dunbar-Ortiz  
Plaintiff

### VERIFICATION OF COMPLAINT

State of South Dakota :  
County of Minnehaha : ss.

James Abourezk, an individual, being first duly sworn upon under oath says: that he is the Plaintiff above named and has read the above and foregoing instrument, understands the contents thereof, and the same is true according to his own knowledge, except as to matters therein stated upon information and belief, and as to such matters he believes the same to be true.

  
James Abourezk

Subscribed and sworn to before me this 29th day of April, 2005

Sandra A. McLean  
Notary Public  
My Commission Expires: 4-10-2009

(SEAL)



**VERIFICATION OF COMPLAINT**

State of California :  
SS.  
County of San Francisco :

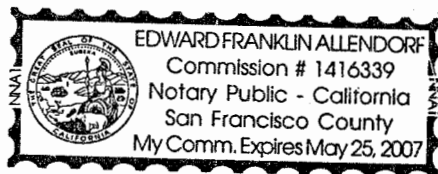
Roxanne Dunbar-Ortiz, an individual, being first duly sworn upon under oath says:  
that she is the Plaintiff above named and has read the above and foregoing instrument,  
understands the contents thereof, and the same is true according to her own knowledge,  
except as to matters therein stated upon information and belief, and as to such matters she  
believes the same to be true.

Roxanne Dunbar Ortiz  
Roxanne Dunbar-Ortiz

Subscribed and sworn to before me this 2 day of June, 2004.

Edward Franklin Allendorf  
Notary Public  
My Commission Expires: May 25, 2007

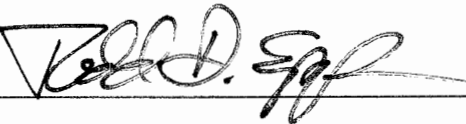
(SEAL)



**NOTICE OF APPEARANCE**

Todd D. Epp, Esq., of Todd D. Epp Law Office, Prof. LLC, d/b/a Abourezk & Epp Law Offices, PO Box 1164, Sioux Falls, SD 57101-1164, hereby notes his appearance on behalf of the above-named plaintiffs.

TODD D. EPP LAW OFFICE, PROF. LLC  
d/b/a ABOUREZK & EPP LAW OFFICES

By: \_\_\_\_\_

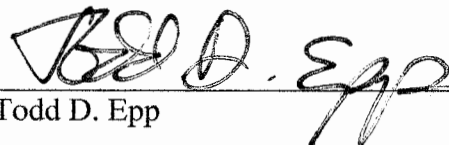
Todd D. Epp  
SD Bar #2700  
Attorney for Plaintiffs  
PO Box 1164  
Sioux Falls, SD 57101-1164  
(o) 605.334.8402  
(f) 605.334.9404  
Email: [tdepp@aol.com](mailto:tdepp@aol.com)

**NOTICE OF DEMAND FOR PUNITIVE OR EXEMPLARY DAMAGES**

The Plaintiffs hereby notify the Defendants and the Court that they are seeking punitive or exemplary damages since they reasonably believe the Defendants' actions against them are willful, wanton, and/or malicious.

**NOTICE OF JURY TRIAL DEMAND**

Plaintiff demands a trial by jury on all issues triable by a jury.

  
\_\_\_\_\_  
Todd D. Epp

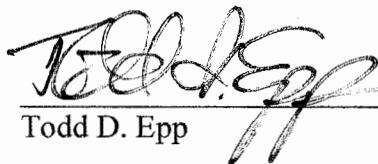
**EXHIBITS ARE ATTACHED AND FILED SEPARATELY**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 29<sup>th</sup> day of April 2005, a true and correct copy of the above noted pleading and exhibits was transmitted to the District of South Dakota CM/ECF system for filing and notification of counsel so registered with the Court's electronic filing system.

In addition, on the same date, this pleading was served via US Mail, prepaid to the following:

Charlie Abourezk Abourezk Law Offices, P.C. PO Box 9460 Rapid City, SD 57709  Attorney for Plaintiff	Michael Abourezk Abourezk Law Offices, P.C. PO Box 9460 Rapid City, SD 57709  Attorney for Plaintiff
Ronald A. Parsons, Jr. Johnson, Heidepriem, Miner, Marlow & Janklow PO Box 1107 Sioux Falls, SD 57101-1107  Attorney for Defendant	

  
\_\_\_\_\_  
Todd D. Epp